

A

STATE OF ORISSA
v.
SUDHAKAR DAS (DEAD) BY LRS.

FEBRUARY 23, 2000

B

[DR. A.S. ANAND CJ., S. RAJENDRA BABU AND
R.C. LAHOTI, JJ.]

C

*Arbitration—Award—Subordinate Judge made award rule of Court—
Appeal dismissed by High Court—Appeal before Supreme Court—Validity of
decree passed based on award.*

D

*Arbitration—Agreement—Absence of escalation clause—In such a case
arbitrator cannot assume any jurisdiction to award any amount towards
escalation—Held decree insofar as it awards escalation charges cannot be
sustained.*

E

*Arbitrator—Power to award interest pendente lite—Decree to the extent
awards pendente lite interest in favour of contractor held sustainable.*

*Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C.
Roy, [1992] 1 SCC 508; Executive Engineer (Irrigation) Balimela & Ors. v.
Abhaduta Jena & Ors., [1988] 1 SCC 418, referred to .*

F

*Arbitrator—Power to award interest for pre-reference period—Arbitra-
tion proceedings pending for one and a half decade—In view of this contractor
allowed to execute decree relating to award of pre-reference interest on fur-
nishing a bank guarantee—Contractor should also give an undertaking that if
issue is decided against him State will be entitled to encash the bank guaran-
tee.*

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2256 of
1984.

From the Judgment and Order dated 9.12.83 of the Orissa High
Court in Misc. A. No. 209 of 1982.

H

Raj Kumar Mehta, Ms. Mana Chakraborty and Ms. M. Sarda for the
Appellant.

J.K. Das for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arises out of arbitration proceedings. The High Court of Orissa dismissed an appeal filed by the appellant against the order of Subordinate Judge, Bhubaneswar making an award made by the Arbitrator a rule of the Court. The three main issues with which we are concerned in this appeal are :

- "1. Whether the Arbitrator could have granted an award for escalation in favour of the contractor?
2. Whether the Arbitrator could have awarded *pendente lite* interest in favour of the contractor? and
3. Whether the Arbitrator could have granted interest for the pre-reference period?"

It is not disputed that the arbitration agreement contained no escalation clause. In the absence of any escalation clause, an Arbitrator cannot assume any jurisdiction to award any amount towards escalation. That part of the Award which grants escalation charges is clearly not sustainable and suffers from a patent error. The decree, insofar as the award of escalation charges is concerned, cannot, therefore, be sustained.

It is conceded by Ms. Mana Chakraborty, learned counsel for the State that the issue relating to the power of the Arbitrator to grant interest *pendente lite* where the agreement between the parties, as in the present case, did not prohibit grant of interest and the dispute referred to the Arbitrator included the claim of interest, is no longer *res-integra* and stands settled in favour of the claimant and against the State in *Secretary, Irrigation Department, Government of Orissa & Others v. G.C. Roy*, [1992] 1 SCC 508, overruling the view to the contrary as expressed in *Executive Engineer (Irrigation) Balimela & Others v. Abhaduta Jena & Others*, [1998] 1 SCC 418. The decree to the extent, it awards *pendente lite* interest in favour of the respondents, therefore, is sustained and the challenge to it fails.

So far as the award of interest for pre-reference period is concerned, it appears appropriate to us, keeping in view the fact that the proceedings in this case have remained pending for almost one and a half

- A decade and the arbitration started as early as in 1975, to direct that the respondent shall execute the decree relating to the award of pre-reference interest only on furnishing a bank guarantee to the extent of that amount together with an undertaking that in the event the Constitution Bench, to which this issue has been referred to in *Executive Engineer, Dhankanal Minor Irrigation Division, Orissa v. N.C. Budhiraj (Dead) by L.Rs.* (Civil Appeal No. 3586 of 1984), decides against the decreeholder-respondents, the State shall be entitled to encash the bank guarantee. The respondents shall keep the bank guarantee alive during the pendency of the matter before the Constitution Bench and on furnishing the bank guarantee and the undertaking the respondents can execute the decree in that behalf.

- C Thus, the appeal is disposed of in above terms. The impugned judgment and decree shall stand modified accordingly. No costs.

T.N.A.

Appeal disposed of.